

NOT FOR PRINTED PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

THE STATE OF TEXAS §
§
v. § CIVIL ACTION NO. 9:20-CV-172
§ JUDGE MICHAEL TRUNCAL
LEARJET 31A BEARING SERIAL §
NUMBER 080 AND ASSIGNED AND §
DISPLAYING REGISTRATION/TAIL §
NUMBER N260RC §

ORDER DENYING DEFENDANT'S MOTION TO SHOW CAUSE

Pending before the court is Defendant's Emergency Motion for Order to Show Cause.¹ (Doc. #28). Having considered the motion, the pleadings in this case, and the applicable law, the court denies the motion.

This case involved a civil forfeiture of a Learjet aircraft by the State of Texas. On December 17, 2020, the court dismissed the case with prejudice and closed the case. (Doc. #27). The order dismissing the case does not make a ruling on whether the Learjet is legally and legitimately owned. Rather, it dismisses the case because the State could not allege facts to meet the notice requirement of Chapter 59 of the Texas Code of Criminal Procedure.

According to the pending motion, the Learjet's owners made arrangements to retrieve the jet but were informed on December 21, 2020, that the Learjet had been seized by Customs and Border Protection ("CBP") in Harlingen, Texas. Defendant subsequently filed this motion asking the court to set a hearing and order the State of Texas and CBP to appear and "show cause that

¹ Defendant's titled the motion as an emergency motion. However, because it did not follow the procedure for filing emergency motions as set out in Local Rule CV-7(l), the court does not consider it as an emergency motion.

they have any valid legal basis to yet again seize the Learjet; to show cause why they are not in contempt of this Court's Order of December 17, 2020; to show cause why the latest seizure is not barred by *res judicata* and collateral estoppel; [and] to show cause why this most recent seizure is lawful under the 4th Amendment of the United States Constitution." (Doc. #28). In its response to the motion to show cause, the State of Texas argues that is not involved in any way in the subsequent seizure and had no knowledge of it until the motion was filed. (Doc. #29). Defendant did not reply to the State's response and the time for doing so has passed.

There is no evidence that the plaintiff in this case, the State of Texas, has any involvement with the most recent seizure of the Learjet. In other words, there is no evidence that the State is in contempt of, or has violated, the court's dismissal order. So, while the court agrees with Defendant that the court retains jurisdiction of the case to enforce its own judgment, there is no evidence that the court's judgment is not being complied with.

Additionally, CBP was never a party or involved in any way with this lawsuit. Thus, it cannot be in contempt of the court's order. The seizure at issue in the pending motion took place in the Southern District of Texas by CBP, a federal government agency not before the court. Therefore, this court does not have jurisdiction over the current dispute or the authority to order CBP to appear before it.

Accordingly, Defendant's Emergency Motion for Show Cause Order (Doc. #28) is **DENIED** without prejudice. Defendant is free to reassert the motion in a court with proper jurisdiction over the issue.

SIGNED this 6th day of January, 2021.



Michael J. Truncale
United States District Judge